

Robert Crema - February 9, 2021

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
)
)

5 CUSTOMS AND TAX ADMINISTRATION OF)
6 THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
7 SCHEME LITIGATION)

8 This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
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14
15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

16 EXAMINATION OF

17 ROBERT CREMA

18 DATE: February 9, 2021
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21
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23
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 R O B E R T C R E M A,

2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:
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8 EXAMINATION BY MR. OXFORD:

9 Q Good morning, Mr. Crema. My name
10 is Neil Oxford. I work at a firm called
11 Hughes, Hubbard & Reed. We represent the
12 plaintiff SKAT in this case. It's nice to
13 meet you.

14 How are you doing today?

15 A I'm doing fine, thank you.

16 Q Great. And where am I talking to
17 you this morning? You're in Florida, I
18 understand?

19 A That is correct.

20 Q Where in Florida are you located?

21 A Naples, Florida.

22 Q Lovely. And how long -- withdrawn.

23 Are you a resident of Naples?

24 A Yes.

25 Q How long have you been a resident
of Naples?

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1 trading as well?

2 A No.

3 Q Did Acer have specialists in
4 dividend arbitrage trading?

5 A Well, we were a small firm. It was
6 always usually one person that traded.

7 Q And who was that one person?

8 A What specific year?

9 Q That's a good question. Let's do
10 2012 through 2014.

11 A It would be Stacey Kaminer.

12 Q Okay. And prior to that, was
13 someone else responsible for the trading
14 aspects of the dividend arbitrage?

15 A Yes. Daniel Kaminer.

16 Q Okay. And did Stacey Kaminer take
17 over after Mr. Kaminer passed away?

18 A That is correct.

19 Q Okay. And when was that? Sometime
20 around 2003?

21 A Yeah, yes.

22 Q Okay. Were you managing partner of
23 Acer at some point?

24 A Managing partner? Managing
25 partner?

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1 Q Did you take notes of that call or
2 do you know if Stacey did?

3 A Take notes? I don't recall.

4 Q Had you or Ms. Kaminer worked with
5 Victoria Foster at her previous employer?

6 A Yes.

7 Q And her previous employer was who?

8 A I believe it was MF Global.

9 Q So did Ms. Foster move from
10 MF Global, when that went bankrupt, to
11 ED&F Man?

12 A Yes. To my knowledge, yes.

13 Excuse me.

14 Q And in fact, it's true, is it not,
15 that it wasn't just Ms. Foster, it was the
16 whole desk --

17 A That correct.

18 Q The whole desk moved from ED&F --
19 from MF Global to ED&F Man?

20 MR. BLESSINGTON: I just caution
21 you again. Let Neil finish the
22 question, please.

23 THE WITNESS: Yeah.

24 MR. OXFORD: Thanks, John.

25 A What was the question?

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1 Q The question was whether the whole
2 desk moved from MF Global to ED&F Man.

3 A Yes, to my knowledge, the whole
4 desk moved with her.

5 Q Okay. So once Ms. Foster got her
6 feet under the desk at ED&F Man, she reached
7 out to you and Ms. Kaminer.

8 Correct?

9 A Yes.

10 Q Okay. Did they ever send you some
11 sort of written materials or presentation or
12 a pitch book?

13 A Not that I recall.

14 Q Okay. So can you tell me
15 everything you can about that initial
16 approach by Ms. Foster?

17 A Well, I guess, bottom line, it was
18 a generic call at first. We -- we cared for
19 her very much. We enjoyed doing business
20 with her at MF Global.

21 And there wasn't much to add, other
22 than she took her whole show, if you will,
23 and all her desk, to perform the same
24 functions that she had at MF Global. In
25 other words, she had access to their capital.

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1 They wanted to engage in all this
2 type of business that MF Global was doing.
3 So there wasn't really that much to discuss
4 with her other than the opportunity to do
5 business direct with us. In other words,
6 introduce our pension funds, any proprietary
7 trading that we might have engaged in.

8 It was all on the table. But it
9 wasn't like a new -- brand new type of
10 business.

11 Q I see. So had the Acer plans,
12 those nine plans, conducted dividend
13 arbitrage trading through MF Global?

14 A I don't know if they all did.

15 Q But some of them did?

16 A Yeah, yeah.

17 Q And that was facilitated through
18 Acer?

19 A Yes.

20 Q Okay. So is it fair to say what
21 Ms. Foster was proposing to you and
22 Ms. Kaminer was that now that the desk has
23 moved from MF Global to ED&F Man, the same
24 relationship and the same type of trading
25 continue?

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1 MR. BLESSINGTON: Object to the
2 form. You can answer.

3 A Correct.

4 THE WITNESS: I'm sorry.

5 MR. BLESSINGTON: That's all right.

6 A Yes, yes.

7 Q Okay.

8 A Just wanted to move the whole show
9 over to the new firm.

10 Q Okay.

11 A Not reinvent the wheel or anything.
12 Same business.

13 Q Right. If it ain't broke, why fix
14 it?

15 A Yeah, exactly.

16 Q So you mentioned earlier that ED&F
17 had the "sellers."

18 What did you mean by that?

19 A Had the -- well, again, to my
20 knowledge, and I would defer to Stacey
21 Kaminer on this, because again, I didn't do
22 the trading.

23 But obviously there was -- they're
24 clearing the trade, so we had to buy the
25 stock from somebody. And I'm assuming that

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1 It actually depended on the
2 financing that they could provide. Sometimes
3 they had financing, sometimes they didn't.

4 When they didn't, we didn't do any
5 business.

6 Q Okay. And by "they," you mean
7 ED&F?

8 A I'm sorry. Yes, yes.

9 Q So that actually -- that
10 anticipates what was going to be my next
11 question.

12 The size of positions that the Acer
13 plans ultimately took in Danish securities
14 were quite substantial, in the tens,
15 sometimes hundreds of millions of dollars.

16 Correct?

17 A Uh-huh.

18 Q Is that a "yes?"

19 A Yes.

20 Q And the pension plans themselves,
21 the Acer plans, didn't have enough money to
22 buy those stocks outright.

23 Correct?

24 A Correct.

25 Q Some of those plans might have been

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1 a few hundred thousand dollars in their
2 accounts, some of them might have a few
3 million, but they certainly didn't have
4 enough money to purchase those Danish
5 security positions they ultimately did.

6 Correct?

7 A Correct.

8 Q And was it your understanding of
9 the scheme that ED&F would facilitate the
10 purchase, by the Acer plans, of the Danish
11 plans by providing financing?

12 MR. BLESSINGTON: Object as to
13 form. You may answer.

14 A Well, again, I wasn't involved in
15 the trades, so there's a lot of different
16 ways to finance.

17 Q Yeah. My question isn't how they
18 did it. My question is whether they did it.

19 MR. BLESSINGTON: Object as to
20 form.

21 A Whether they did financing?

22 Q Let me just ask it again so we have
23 a clean record.

24 A Yeah, I'm not clear.

25 Q Was it your understanding -- and I

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1 know that you were not involved in
2 implementing the trading, but you -- you had
3 some meetings with Victoria Foster and her
4 team.

5 A Right.

6 Q And you were aware that Acer had
7 done similar trading through MF Global.

8 Based on your understanding, did
9 you believe that the way -- the only way that
10 Acer could afford to buy these substantial
11 positions in Danish securities was that
12 ED&F Man agreed to facilitate that by
13 providing financing?

14 A Yes, that was my understanding.

15 Q Okay. And do you know how that
16 financing operated?

17 A No.

18 Q Okay. Was Acer, to your knowledge,
19 ever involved in identifying or locating
20 securities that would ultimately be purchased
21 by the Acer plans?

22 A Repeat it, please?

23 Q To your knowledge, was Acer ever
24 involved in identifying the Danish securities
25 that were ultimately to be purchased by the

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1 Q Okay. And was the purpose of this
2 power of attorney, and the others like it
3 signed by the other Acer plans to permit
4 Acer, on behalf of the plans, to pursue a
5 dividend arbitrage strategy and submit
6 reclaims for withheld tax to the Danish
7 government?

8 MR. BLESSINGTON: Object as to
9 form. You may answer.

10 A Yes.

11 Q So, under this power of attorney,
12 and the others like it, Acer was authorized
13 to decide and to give advice on which
14 securities your AIG plan and the other Acer
15 plans would purchase.

16 Correct?

17 MR. BLESSINGTON: Object as to
18 form. You can answer.

19 A Yes.

20 Q And this power of attorney
21 authorized Acer to place orders for those
22 same securities on behalf of Acer plans.

23 Correct?

24 A Correct.

25 Q And those decisions as to which

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1 securities to trade, and any ancillary
2 financial instruments to enter into, were
3 made with respect to the Danish trading by
4 Ms. Kaminer and not by, for example, in this
5 case, you as the beneficiary or trustee of
6 the plan?

7 A It was strictly Ms. Kaminer.

8 Q Did Ms. Kaminer make the trading
9 investment decisions in Danish securities for
10 all of the nine Acer plans?

11 A I believe so.

12 Q And to your knowledge, was anybody
13 else at Acer involved in making those
14 decision?

15 A On an individual basis is the
16 question? Or overall as a --

17 Q Just sort of generally, was anybody
18 else involved in making the trading decisions
19 in Danish securities on behalf of the nine
20 Acer plans, other than Ms. Kaminer?

21 A No. She was the only one.

22 Q And presumably, if we want to learn
23 about the factors that went into the trading
24 decisions, which stocks to buy, when to buy
25 them, on whose behalf, those are questions

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1 A My guess would be -- well, I don't
2 want to guess. I'm not an attorney, so I
3 can't answer that question.

4 Q Yeah, I'm not, you know, trying to
5 be tricky. I'm not asking you a legal
6 question, sir.

7 But you were, in fact, the trustee
8 of this pension plan.

9 Correct?

10 A Right.

11 Q Okay. And you understand, just as
12 a general matter, that a trustee comes with
13 certain responsibilities?

14 A And I would carry out those
15 responsibilities as trustee.

16 Q Okay. And what were those
17 responsibilities?

18 A If you're asking me what the
19 responsibilities are, I don't know.

20 Q Exactly?

21 A I'm sorry. Yeah.

22 That, I don't know.

23 Q Do you know whether, as of 2002 or
24 any time subsequently, AIG, the company that
25 sponsors the plan, has had any employees?

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1 A Subsequent to 2002?

2 Q Yeah.

3 A Yeah, we had employees.

4 Q Who were those employees?

5 A Oh, boy. I don't recall.

6 Q Okay.

7 A I don't recall the staff.

8 Q What were those employees doing
9 after 2002?

10 A Securities lending, general
11 accounting, supporting the office, trading,
12 trading assistance, prior to 2002.

13 Q Okay. And after 2002?

14 A After -- after Mr. Kaminer passed
15 on, we were -- ran very thin with people.
16 There was only four or five of us after that.

17 Q Okay. So I just want to make sure
18 I have your testimony as best you recall.

19 After October of 2002, did AIG, the
20 company, have any employees?

21 MR. BLESSINGTON: Object as to
22 form.

23 A AIG, the company? Well, AIG, the
24 company, I'm going to answer that in this
25 way.

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1 After Acer came into being, Acer
2 had the employees, if any. AIG had none.

3 Q Okay. And -- thank you. That's a
4 helpful answer.

5 And is it also, following that, any
6 business that was conducted by one of the two
7 companies was conducted by Acer and not AIG?

8 MR. BLESSINGTON: Object as to
9 form. You can answer.

10 A That was done by Acer, not AIG, and
11 conducted by Acer?

12 Yes. I would say yes to that.

13 Q Okay. Are you familiar with a
14 company called Moira Associates LLC?

15 A Yes.

16 Q What is that company?

17 A It's an investment company.

18 Q What kind of investment company?

19 A Any and all opportunities.

20 Q Can you give me -- can we go off
21 for one second?

22 THE VIDEOGRAPHER: Stand by. The
23 time is 2:13 p.m. and we're going off
24 the record.

25 (Brief recess taken.)

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1 thing. No, no.

2 That's my recollection.

3 Q Okay. But it's your testimony that
4 a trade diagram could have meant that Acer
5 was going to provide the buy transaction and
6 the amount.

7 Is that right?

8 A Yes. They call it a "diagram."
9 It's a big rift between countries, the
10 English language. A diagram to them is
11 totally different than to us.

12 A diagram could simply mean what
13 you just said; the buy, pricing, and how much
14 do you want to do. That's the beginning and
15 the end of the diagram.

16 In the states, we would take that
17 to be a little bit more encompassing and
18 involved. But not necessarily in the U.K.

19 Q Okay. And then --

20 A I understand the question.

21 Q Okay. And then, the top e-mail
22 that says, "I need assistance with this," am
23 I hearing you correctly that your
24 interpretation of that e-mail is that Stacey
25 is asking you to help her make decisions on

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1 which names the Acer plans would buy?

2 MR. BLESSINGTON: Objection. You
3 may answer.

4 A Yes, she could be asking me that.
5 So basically, it would be participation in
6 the -- in the entire conversation. And a lot
7 of times, she would do this to be sure that a
8 total of four ears on our side would hear.

9 We used to do that often. Let us
10 both hear what is being said, and it made us
11 feel more comfortable.

12 So when she says "I need assistance
13 with this," it could have been just for that
14 reason.

15 Q Okay. But Ms. Kaminer would have
16 been the person that was primarily
17 responsible for determining which
18 transactions to engage in?

19 MR. BLESSINGTON: Object as to
20 form, but you may answer.

21 A Well, we would synthesize together
22 which trades we would like to do, that we
23 would be interested in doing, and how big,
24 what kind of size. But then she would take
25 over. She's the trader, she would take it